

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

In re: )  
 )  
 LEROY C. SMITH, ) Bankruptcy Case No. 03-10992  
 LOUISE M. SMITH, ) Bankruptcy Case No. 04-10633  
 )  
 Debtors. )  
 \_\_\_\_\_ )  
 )  
 LEROY C. SMITH and ) 1:07CV30  
 LOUISE M. SMITH, )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 FNB SOUTHEAST and U.S. )  
 BANKRUPTCY ADMINISTRATOR )  
 MICHAEL D. WEST, )  
 )  
 Appellees. )

## ORDER

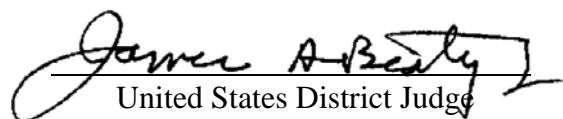
This matter is before the Court on a Joint Motion to Dismiss Appeal [Document #7] filed by Appellees FNB Southeast and the U.S. Bankruptcy Administrator (“Appellees”). In their Motion to Dismiss, the Appellees seek to dismiss the “Notice of Appeal” filed in this bankruptcy case by Debtors Leroy C. Smith and Louise M. Smith (“the Debtors”). On December 21, 2006, the Debtors filed a purported Notice of Appeal with the Bankruptcy Court, seeking to appeal a December 11, 2006 Bankruptcy Court Order dismissing these cases. However, the Debtors failed to designate the items to be included in the Record on Appeal and failed to submit any items so designated, as required by Bankruptcy Rule 8006. Therefore, no appeal record was

transmitted to this Court.

The present Motion to Dismiss was filed with the Bankruptcy Court on January 8, 2007, and was transmitted to this Court on January 10, 2007. However, the Debtors did not file any response to the Motion to Dismiss. On February 22, 2007, the Clerk's Office notified the Debtors that a response had not been filed, that the Motion to Dismiss would be referred to the Court for consideration as an unopposed motion, and that if the motion was opposed they could submit a proposed response and explanation for consideration by the Court. Despite this warning, the Debtors still have not responded to the Motion to Dismiss. In addition, the Debtors still have not designated any items to be included in the Record on Appeal. Therefore, the Court will grant the unopposed Motion to Dismiss, based on Debtors' failure to respond or otherwise pursue their appeal in this Court, as well as Debtors' failure to comply with Bankruptcy Rule 8006.

IT IS THEREFORE ORDERED that Appellees' Joint Motion to Dismiss [Document #7] is GRANTED, and this appeal is hereby dismissed.

This, the 4<sup>th</sup> day of April, 2007.



James A. Beatty  
United States District Judge